



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

Distr.: General
22 August 2011

Original: English

Committee on the Elimination of Racial Discrimination
Seventy-ninth session

Summary record of the 2101st meeting

Held at the Palais Wilson, Geneva, on Tuesday, 16 August 2011, at 10 a.m.

Chairperson: Mr. Kemal

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The meeting was called to order at 10.10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Initial to fourth periodic reports of Kenya (continued) (CERD/C/KEN/1-4; CERD/C/KEN/Q/1-4)

1. *At the invitation of the Chairperson, the members of the delegation of Kenya took places at the Committee table.*
2. **Mr. Mute** (Kenya National Commission on Human Rights) said that the Kenya National Commission on Human Rights (KNCHR) had interacted with the Government and the Secretariat of the Committee as part of the process of preparing the report submitted by Kenya under article 9 of the Convention (CERD/C/KEN/1-4).
3. Since acceding to the Convention in 2001, Kenya had adopted no comprehensive legislation to implement its obligations. Article 27 of the Constitution guaranteed equality before the law and freedom from discrimination, and it was planned to adopt legislation containing substantive and holistic provisions to make that article operational. The definition of discrimination should acknowledge its intersectionality and cover both direct and indirect forms.
4. The State party should ensure that laws governing citizenship were in harmony with the Constitution, repealing all discriminatory provisions. Citizenship laws should apply equally and all Kenyans, including members of minority communities, should have access to registration documents, including the national identity card which was crucial for the exercise of fundamental rights and freedoms. A decision of the African Committee of Experts on the Rights and Welfare of the Child, which had found Kenya to be in violation of the rights of Nubian children, should be acted upon.
5. Kenya was subject to cyclical episodes of conflict, often instigated by politicians and the media, particularly during elections. The Government should criminalize hate speech through a single comprehensive piece of legislation. Provisions already existed in the Penal Code and other laws, but they were insufficient.
6. In examining the question of equal enjoyment of civil, political, economic, social and cultural rights, the KNCHR had chosen to focus on minority groups as defined in articles 56 and 260 of the Constitution. The State should implement the recommendations of the African Commission on Human and Peoples' Rights calling on Kenya to recognize the land rights of the Endorois community. It should also allow a visit by the Commission's Working Group on Indigenous Populations/Communities in Africa.
7. The lives and livelihoods of lesbian, gay, bisexual, transgender and intersex persons remained endangered in Kenya because of multiple discriminatory practices. The State should promote tolerance and understanding, and adopt laws to protect such persons from discrimination, particularly in access to health care.
8. The Ratification of Treaties Bill, currently under discussion, should include provision for a declaration under article 14 of the Convention recognizing the Committee's competence to receive and consider communications from individuals claiming to be victims of violations by the State.
9. A law currently being drafted to make article 59 of the Constitution operational would have the unfortunate effect of fragmenting the KNCHR into as many as three separate commissions. The KNCHR — currently classified as a category A institution by the International Coordinating Committee of National Human Rights Institutions — called on the Committee to urge Kenya not to take that step. Kenya should take note of the

Committee's general recommendation No. 17 concerning the establishment of national human rights institutions.

10. **Mr. Kilonzo** (Kenya) said that Kenya was, according to its Constitution, a multiparty democratic State. Each political party had to respect and promote human rights and gender equality. The Political Parties Act, currently in its third reading before Parliament, contained provisions obliging political parties to take measures to ensure gender balance, and allocating 30 per cent of State party funding to promoting the parliamentary representation of women and other special interest groups.

11. The most recent national census, held in 2009, had disaggregated data by, among other things, gender, economic activity, housing, and ethnic and religious affiliation. The information obtained was useful for social and economic planning and for prioritizing development needs. It also helped the Government to decide how to distribute the Equalization Fund which, according to the Constitution, was used to provide basic services to marginalized areas of the country.

12. Although the work of the Truth, Justice and Reconciliation Commission was not yet complete, the term of its mandate would be extended. The recommendations contained in its final report would be the basis for appropriate interventions including reparations, rehabilitation and the restoration of victims' rights. The impact of the Commission was being felt throughout the country. It had collected over 21,000 witness statements, conducted public hearings in north-eastern Kenya and released a schedule for hearings in other regions.

13. Kenya was party to the Rome Statute of the International Criminal Court (ICC), in which context it had introduced the International Crimes Act of 2008. In 2010 Kenya had agreed to the establishment of ICC offices in Kenya and ICC officials were active in the country. President Mwai Kibaki and Prime Minister Raila Odinga had publicly expressed their willingness to cooperate with the ICC prosecutor. Furthermore, a constitutional impediment preventing the prosecution of international crimes had been removed. Sixty-one per cent of Kenyans remained in favour of the ICC process.

14. Kenya had revolutionized its judicial system. It had been the first country in the world to advertise the vacancy for a Chief Justice, it had appointed a new Prosecutor with security of tenure and it was in the process of appointing a new Inspector General of Police.

15. Concerns that legislation to implement the Constitution would not be adopted within the prescribed time limits were based largely on misinformation. All outstanding legislation was making good progress.

16. Kenya would not reduce the mandate of the KNCHR. However, it did have to take account of gender issues, and therefore the idea of merging the KNCHR with the Kenya National Commission on Gender and Development under article 59 of the Constitution had to be taken seriously. As Minister for Justice he was committed to the idea of creating an Office of the Ombudsman. If he could not secure parliamentary approval he would insert it into the Human Rights Act.

17. National unity and cohesion were fundamental elements of the new Constitution and were being fostered by various initiatives. Moreover, Kenya had a coalition Government which included all political parties except one.

18. No areas in Kenya were reserved for a particular race although, due to economic and cultural factors, some areas did have large populations of one particular race.

19. The settlement of disputes through customary law was enshrined in the Constitution. However, customary law could not be applied if it contravened the Bill of Rights, the Constitution or any written law.

20. **Mr. Kibara** (Kenya) said that the report before the Committee, describing Kenya as a dualist State, had been filed under the old Constitution. According to article 2, paragraph 6, of the new Constitution, all ratified treaties automatically became part of Kenyan domestic law. The fact that the Constitution made provision for enabling legislation to implement international treaties did not detract from the fact that Kenya was a monist State.

21. According to the new Constitution the ratification of binding international treaties had to be approved by Parliament. That process provided an opportunity for implementation mechanisms to be examined before a treaty was ratified. Legislation on how ratification took place was currently under examination.

22. Fears about article 59 of the Constitution were misplaced. The article had been drafted to facilitate acceptance of the Constitution at the referendum of 2010. The question of whether to merge the KNCHR with the Kenya National Commission on Gender and Development and the Public Complaints Standing Committee, or whether to keep them separate, had been debated in a number of stakeholder meetings but no consensus had been reached. The Commission for the Implementation of the Constitution had also looked into the matter and found that there was no constitutional obligation one way or the other.

23. The authorities felt it would be unwise to combine those bodies, also because achieving the commitment to women's rights enshrined in the Constitution required a powerful dedicated gender commission with constitutional backing. The Government wanted to ensure that the KNCHR had constitutional status and had no intention of reducing its power.

24. An Ombudsman who had a separate mandate from the KNCHR was required to deal with issues of maladministration. As the recently established devolved Government comprised 47 county-level governments, it was important to prevent the devolution initiative from being undermined by maladministration.

25. With regard to access to legal aid services, especially for marginalized communities, the Government had already introduced various methods of developing legal aid on a pilot basis. They included an initiative involving the use of community paralegals, which had been piloted in Kisumu near the Ugandan border and had proved highly successful. It was planned to extend the initiative to other parts of the country in 2012. The overall legal aid scheme would provide for paid counsel, the involvement of non-governmental organizations and university-based legal advice. A basic policy had already been formulated and legislation to establish an independent legal aid commission had been drafted. Legal aid was already being provided by various means, including mobile court services, to communities in remote areas. In addition, legislation had been drafted on the establishment of small claims courts. Another bill provided for an increase in high court judges from 50 to 120, so that all counties could be served.

26. As soon as Parliament ratified the bill concerning international treaties, steps would be taken to establish implementation machinery, including individual complaint mechanisms.

27. **Mr. Kilonzo** (Kenya) said that article 50, paragraph 2 (h), of the Constitution provided for the assignment of an advocate to accused persons by the State and at State expense, if substantial injustice would otherwise result.

28. **Ms. Sinyo** (Kenya) said that Parliament was required, pursuant to article 45, paragraph 4 (a) and (b), of the Constitution, to enact legislation that recognized marriages concluded under any tradition or system of religious, personal or family law provided that such marriages or systems of law were consistent with the Constitution. Article 170, paragraph 5, of the Constitution limited the jurisdiction of a Kadhis' court to the determination of questions of Muslim law relating to personal status, marriage, divorce and

inheritance. A marriage bill had been drafted in the light of the Constitution, which would allow various groups to apply their respective marriage laws and would repeal existing outdated laws. Clause 4 of the bill required the State to respect the legal status of all marriages contracted under its provisions and to issue a marriage certificate. It also stipulated that the respective group laws would be applicable to the settlement of disputes.

29. Articles 10, 27 and 53–57 of the Constitution provided for affirmative action on behalf of marginalized groups, including children, women, persons with disabilities and minorities. Various laws, such as the Persons with Disabilities Act, were being amended to bring them into line with those provisions. The National Gender and Development Policy, the National Children’s Policy, the National Policy on Persons with Disabilities and the National Policy on Elderly Persons had all been adopted to ensure non-discrimination and compliance with the Convention.

30. A Presidential Decree had been adopted in 2009 to promote the recruitment and advancement of women in the public sector. Thirty per cent of public-sector posts and decision-making positions were to be reserved for women. According to recent data, 29 out of a total of 35 Ministries had reached or exceeded the 30 per cent target.

31. The Government provided grants for orphans, vulnerable children, persons with severe disabilities and older persons throughout the country. The grants could also be used to hire caregivers and service providers for persons with severe disabilities. Such regular and predictable support also encouraged members of the community to look after vulnerable and orphaned children. Moreover, awareness-raising campaigns were being conducted to prevent the stigmatization of persons with disabilities.

32. The Kenyan police had recently prevented the transportation of an albino man to a neighbouring country, where albinos were killed and their body parts sold. The amended version of the Persons with Disabilities Act recognized albinism and the associated visual impairment as a disability. The Ministry of Medical Services was developing a policy aimed at providing albinos with sunscreen. The National Council on Persons with Disabilities had been allocated KSh 100 million during the 2011/12 financial year to facilitate the purchase and distribution of sunscreen to persons suffering from albinism.

33. The Government had established a National Development Fund for Persons with Disabilities to mainstream issues of disability and had earmarked KSh 200 million in 2010 for public institutions engaged in the rehabilitation of persons with disabilities and organizations that supported their involvement in income-generating activities. The funds were also used to purchase devices such as wheelchairs, crutches and white canes. The amount earmarked by the Government for the current financial year had been increased to KSh 385 million. A university that specialized in providing tertiary education to persons with disabilities had received a grant of KSh 10 million.

34. **Ms. Lwanga** (Kenya) said that article 20 of the Constitution provided for the application of the Bill of Rights to all persons and article 27 prohibited discrimination on 17 grounds. Section 3 of the National Cohesion and Integration Act contained exhaustive provisions regarding discrimination. Section 4 outlawed victimization and section 7 required the inclusion of a cross section of Kenyan communities in public employment. Sections 13 and 62 penalized propaganda or hate speech perpetrated by individuals and through the media. The Kenyan Penal Code also criminalized acts that offended the sensibilities of other persons on the basis of religion.

35. Section 6 of the National Cohesion and Integration Act set out an elaborate procedure for the reporting and processing of complaints of discrimination. A report by the Commission on Cohesion and Integration indicated that about 24 per cent of complaints related to ethnic discrimination, 19 per cent to hate speech, 3 per cent to religious discrimination, 3 per cent to discrimination by way of victimization, 3 per cent to racial

discrimination and 5 per cent to the media, while 43 per cent fell outside the Commission's mandate. With a view to addressing the issue of overlapping mandates, an integrated complaints processing system was being developed which would bring together institutions such as the Commission on Cohesion and Integration, the Anti-corruption Commission, the KNCHR and the Ombudsman.

36. Article 33, paragraph 2, of the Constitution stipulated that the right to freedom of expression did not extend to propaganda for war, incitement to violence, hate speech or advocacy of hatred. Sections 13 and 62 of the National Cohesion and Integration Act outlawed actions amounting to hate speech or incitement. A national conference in June 2010 had discussed Kenya's ability to address hate speech under existing legislation. The conference had highlighted the need for effective implementation of the relevant legal provisions before the enactment of more detailed legislation concerning freedom of expression.

37. District peace committees and the UWIANO Platform for Peace, which represented the Government and civil society, had been established to defuse inter-ethnic tensions. The community policing project and district security committees sought to promote security for all members of society. Other initiatives included slum upgrading programmes to address shelter needs, a health insurance programme and a subsidized education programme.

38. There was clearly a need for greater awareness of the definition of the term "discrimination" in the Convention. The Commission on Cohesion and Integration had promoted the implementation of education programmes in partnership with the Ministry of Justice. Informal discussions of discrimination issues were held in so-called "cohesion cafes". A documentary had been produced at the peak of the constitutional referendum process to remind Kenyans of their duty to become involved.

39. **The Chairperson** observed that a number of people, including an Assistant Minister and members of Parliament, had been arrested and prosecuted for hate speech.

40. **Ms. Njau-Kimani** (Kenya) said that the Government had launched an Open Data Initiative, a portal on which core public data were freely available in a useful digital format for researchers, policymakers and the general public. The published data included information on the 2009 census, national budget data, and information on health-care and educational facilities. The Government would provide disaggregated data in its next report to the Committee. Moreover, a core document would be submitted by the end of August 2011.

41. Devolved funds had been introduced with a view to promoting local ownership of economic and social policies. Although some challenges had been encountered, there were clear indications that they had improved local participation in decision-making. In particular, their institutional and fiscal flexibility rendered them more responsive to the needs of local communities. They focused on economic empowerment, education, health, water, agriculture, roads and bridges, security and sanitation, and had helped communities to prioritize projects. They also had the potential to redress historical and systemic wrongs such as regional disparities and to promote poverty reduction initiatives.

42. With regard to the question concerning the reported unwillingness of Asians to employ Africans, she said that the implication of discrimination was inaccurate, since most Asians ran family businesses and therefore tended to hire family members as managers and Africans as lower-level staff.

43. **The Chairperson** said that the success of the Constituency Development Fund had generated great interest in other African countries. It had led to the enactment of article 203 of the Constitution, pursuant to which no less than 15 per cent of all Government revenue must be devolved to county governments.

44. **Ms. Chweya** (Kenya) said that in 2006 the Nubian community had complained to the African Commission on Human and Peoples' Rights that the Kenyan Government had breached their rights by failing to issue identity cards. The Government had submitted its response in November 2006 and the matter was still pending before the Commission.

45. In 2009 the African Commission on Human and Peoples' Rights had found that the Kenyan Government had violated the rights of the Endorois people. Its recommendations included the restoration of rights of land ownership. The decision had been endorsed by the African Union on 4 February 2010 and had been fully accepted by the Government of Kenya. The new Constitution formally recognized and defined minorities and marginalized communities and directed the Government to implement affirmative action programmes on their behalf. The Government was currently setting up the necessary structures to ensure the effective implementation of the African Commission's recommendations.

46. With regard to the persons displaced by the post-election violence of 2008, some had fled to their original homes or were integrated into neighbouring communities. The rest had sought refuge in 118 camps. A Ministry of Special Programmes had been established to offer protection and assistance to the displaced persons. As a result, many of the camps had been closed. A total of KSh 953 million had been disbursed to 38,000 heads of households to reconstruct their homes. The Government had purchased land to resettle the remaining internally displaced persons. The resettlement process had been slowed by financial constraints and the need to educate communities to accept the persons concerned. District peace committees had been established to coordinate peacebuilding activities. They were composed of religious leaders, elders from various communities, district commissioners, area chiefs and security officers. They had been very successful in defusing ethnic tensions through mediation, dialogue and awareness-raising.

47. A policy on internally displaced persons had been developed and was currently awaiting Cabinet approval. It established a framework for their protection and provided for action to prevent future displacement and for a review of existing legislation in order to prevent impunity. In future, action could be taken against persons who used hate speech to turn one community against another.

48. Land issues had been a major source of ethnic conflict in Kenya. The Government had reformulated the National Land Policy which sought to address land administration and use and to ensure security of tenure and redress historical injustices. The policy had been adopted by Parliament on 3 December 2009 and a National Land Commission bill had been drafted to ensure its implementation. The Commission would see to it that land issues were addressed in a holistic manner. It was also mandated to address historical land issues and to encourage the use of mediation and conciliation procedures as channels of dispute resolution.

49. **Mr. Kilonzo** (Kenya) added that internally displaced persons were included among the victims of offences who would receive protection under a new law which would enter into force in spring 2012. The Government also attached great importance to the law establishing the national land appeals commission, which should also enter into force by March 2012.

50. **Mr. Katelo** (Kenya), replying to the question on discrimination against Nubians, Somalis and coastal Arabs, said that the Nubians originated from the Nuba mountains in central Sudan. They had been forcibly conscripted into the colonial British army in the early 1900s and obliged to fight in the World Wars, after which they had been demobilized in Kenya. The majority of them had not registered at the time of Kenya's independence in 1963 because, as forced migrants, they had planned to return to the Sudan. When it had become clear that that was not possible, they had tried to register in Kenya. The Somali community lived in the North Eastern Province, which shared a border with Somalia. As

that country was ravaged by war, there were over 500,000 Somali refugees in Kenya, who sometimes mixed with the local communities, making it difficult for the registration agencies to distinguish between Kenyans and foreigners. Moreover, some asylum-seekers were combatants, which raised security fears, and it was often unclear which individuals were genuine asylum-seekers and which were illegal immigrants. Many people from Arab countries and island nations such as the Comoros had migrated to his country. That presented a challenge in terms of distinguishing between the Kenyan coastal people and new immigrants. There were also security issues because some of those immigrants had been involved in terrorism. Given all those challenges, the Government had implemented a vetting mechanism involving key Government departments and local community elders. The elders assisted the Government in identifying the bona fide Kenyans and distinguishing them from immigrants.

51. The Government had implemented several measures to address inefficiencies in registration and citizenship. Article 12 of the new Constitution provided that registration and citizenship were a right; any individual who considered that right to have been violated could now take the Government to court. Children below the age of 8 who were found to be in Kenya without their parents were automatically granted Kenyan citizenship. Lawful residents who had lived in the country for seven years also had the right to apply for citizenship through registration. The Citizenship and Immigration Bill, 2011 provided that all other persons, such as stateless persons, could apply for citizenship once they had lived in the country for 40 years. All registration legislation was being amended to bring it into line with the Constitution. The Government had increased its capacity to register births and issue national identity documents through nationwide mobile units. A database was also currently being developed, which would compile all data on population registration, including nationals, refugees and foreigners. It would facilitate registration for nationals and would prevent duplicate registration, which had been a problem in the past.

52. As at 7 August 2011, there had been 535,273 documented refugees in Kenya. The Dadaab refugee camp was the world's largest, with a population of 399,000. It was extremely congested, which made providing humanitarian assistance a significant challenge. In order to improve conditions for refugees, the Government had launched appeals and mobilized resources for the provision of basic services. It had opened two additional refugee camps to provide more space for the 1,000 refugees who were arriving on a daily basis. Several high-profile visitors had been received, helping to publicize the refugees' plight. Registration capacity had increased and, in cooperation with the Office of the United Nations High Commissioner for Refugees, the capacity for the provision of food, water, health services, education and shelter had also been increased. The Government had appealed to the international community to intervene in Somalia in a more comprehensive manner. The issue of Somali refugees could only be resolved through the establishment of peace in Somalia.

53. **Mr. Kilonzo** (Kenya) added that Kenya and the Horn of Africa were facing the worst drought for over 60 years. Expressing the hope that the Committee could help with advocacy, he assured its members that refugees would face no discrimination whatsoever in Kenya.

54. **Mr. Kihwaga** (Kenya) said that the Witness Protection Agency had been established in 2008 to give effect to the provisions of the 2006 Witness Protection Act. In 2008, the Agency had been linked operationally with the Office of the Attorney General. Amendments had been made to the relevant legislation in 2010 to remove those links. The Agency now had an independent advisory board and its own budget. Once it became fully operational, it was expected to have a total staff of 296, who would receive training in international best practice in witness protection. The Agency had benefited from cooperation with the United Nations Office on Drugs and Crime. As a developing country,

Kenya was unable to allocate sufficient funds to make the witness protection programme fully operational; its budget for the current financial year was US\$ 3.4 million.

55. **Mr. Kilonzo** (Kenya) said he trusted that his delegation had demonstrated that his Government was committed to the protection of human rights, particularly the rights enshrined in the Convention. Under the Constitution, a population quota had been introduced in order to ensure that all 42 tribes present in his country were represented. There was a bill currently before Parliament for the implementation of that quota system.

56. The President and the Prime Minister had set up the Ministry of State for Planning, National Development and Vision 2030.

57. The Constitution provided that every individual had the right to bring a violation or threat of a violation of the Bill of Rights before court free of charge.

58. **Mr. de Gouttes** asked if individuals could now invoke the Convention directly in Kenyan courts, with the exceptions the delegation had outlined. If so, it would be useful if the State party's next periodic report could include information on whether the new legal system resulted in increasingly frequent recourse to the Convention in the courts. In particular, the Committee would welcome data on complaints, prosecutions and sentences concerning racial discrimination.

59. **Mr. Kibara** (Kenya) said that all the international instruments to which Kenya was a party could be invoked directly in Kenyan courts. The only issues that could not be addressed by legislation were primarily procedural. There was therefore no requirement for the Convention to be translated into domestic legislation.

60. **Mr. Kilonzo** (Kenya) added that, under the Constitution, all international instruments ratified by Kenya formed part of its domestic law. He informed the Committee that a bill on individual complaints under article 14 of the Convention was scheduled to be adopted by the end of August 2011.

61. **Mr. Avtonomov** asked whether the State party's judicial system was based more on common or civil law, and whether any other legal systems were influential in Kenyan law. It would be useful to know how the foundations of the legal system affected the direct application of the Convention before the courts.

62. He requested additional details on how applications for citizenship from Nubians were processed, particularly whether they were treated as new applicants. It would be useful to have confirmation of reports that the Government had written to the Council of Elders of the Nubian Community in 2010 recognizing that community as one of Kenya's tribes.

63. He asked whether the Government planned to ratify the amendment to article 8 of the Convention. If not, he urged the delegation to bring that issue to the Government's attention.

64. **Mr. Kilonzo** (Kenya) said that new legislation on citizenship due to be adopted by Parliament by the end of August 2011 would address the issue of the citizenship of Nubians, Arabs and Somalis. It would also remove the provision prohibiting Kenyan women who were married to foreigners from transmitting their Kenyan citizenship to their children.

65. **Mr. Katelo** (Kenya) said that his delegation had no precise information on the letter to the Council of Elders of the Nubian Community. A written answer would be provided to that question.

66. **Mr. Kibara** (Kenya) said that, while Kenya had a fundamentally common law system, when legislation was enacted, it was superior to any doctrines of common law.

Once ratified, international treaties gained the status of ordinary law and were applied provided they were consistent with the Constitution. In practice, Parliament ensured that there were no inconsistencies before ratifications took place. To date, no inconsistencies had been found.

67. A written reply would be submitted on the issue of the amendment to article 8 of the Convention.

68. **Mr. Kilonzo** (Kenya) said that the Kenyan court system was now quite elaborate, with a Supreme Court, a Court of Appeal, a High Court which would be nationwide and magistrates' courts. The new Constitution included a requirement that all serving judges should be subject to a review to ascertain whether they were fit for service, which would be undertaken by a panel of three internationally recognized jurists. In addition, for the first time in the country's history, judges could be removed from office on the grounds of incompetence.

69. **Mr. Kut** asked whether article 17 of the new Constitution, concerning acquisition of citizenship, did not entail discrimination as it applied two different sets of rules to two legally defined groups of people.

70. **Mr. Kilonzo** (Kenya) said that the distinction between acquiring citizenship by birth, which was irrevocable and permanent, and acquiring it through registration, which could be revoked if found to have been fraudulent, had been the subject of heated debate prior to the referendum on the Constitution.

71. **Ms. Sinyo** (Kenya) said Kenya's Task Force on Citizenship and related provisions of the Constitution had thoroughly debated all issues related to citizenship before the country amended its legislation on citizenship to bring it into line with its Constitution. The Constitution had been overwhelmingly approved in a referendum and could not be revised. Legislation had been enacted, however, which established grounds for the revocation of citizenship in very broad terms, as well as legal safeguards so that decisions to revoke citizenship could be appealed, free of charge, in accordance with the Kenyan Bill of Rights.

72. Citizenship obtained by birth was not superior to citizenship obtained by registration. However, if a person lied under oath or did not disclose all relevant information when applying for citizenship, the citizenship could be revoked.

73. **Mr. Kilonzo** (Kenya) said that it was impossible to revoke Kenyan citizenship acquired by birth, as the country recognized that one could not commit fraud simply by being born. However, the State reserved the right to revoke citizenship in cases in which an individual had obtained it fraudulently, inter alia, by lying on the application form or submitting forged documents. The issue was, fundamentally, not one of citizenship, but of the conduct of persons prior to, during or after their acquisition of citizenship.

74. Under the Constitution, a child of unknown nationality and parentage who was found in Kenya and appeared to be under 8 years of age was presumed to be a Kenyan citizen. However, the State granted any relative or parent of that child who might later come forward the right to appeal the decision to grant the child Kenyan citizenship.

75. **Ms. Crickley** said she understood that Kenya was intending to merge the National Gender and Equality Commission Bill with the National Commission on Human Rights Bill and asked how Kenya intended to ensure that such a step would not, as had occurred in other States, dilute the focus on gender discrimination, particularly that experienced by women from ethnic minorities.

76. **Mr. Kilonzo** (Kenya) said that Parliament was to establish the two commissions under the Paris Principles. Kenya was, moreover, restructuring those commissions rather than merging them together.

77. Kenya would also study the establishment of an Administrative Justice Commission, which would act as an ombudsman to protect the interests of Kenyans. There were concerns, however, that Kenya was establishing too many commissions.

78. **Mr. Thornberry** said that questions remained as to whether the new arrangements in Kenya would continue to give adequate prominence to the implementation of human rights conventions. Article 4 of the Convention, about which Kenya had expressed no reservations, required legislation to be enacted by the State party. The Committee had, moreover, indicated the type of legislation required in its general recommendation No. 15 (1993) on article 4 of the Convention.

79. International standards recognized that the traditional occupation of land gave rise to rights, which could arise under both universal instruments, including the African Charter on Human and Peoples' Rights and the Convention, and instruments particular to the group concerned.

80. Civil society in Kenya had provided an extensive shadow report, in which groups who described themselves as minorities or indigenous peoples had expressed their fears of assimilation into larger communities. The State had a responsibility to address those concerns. It was to be hoped that Kenya would remain a country of vibrant diversity.

81. **Mr. Kilonzo** (Kenya) said that, under its Constitution, Kenya had classified land into three categories: public, community and private. All ethnic groups and communities in the country were considered indigenous. Rather than use the word "indigenous", the Constitution defined "marginalized groups", and Kenya was seeking to highlight the challenges those groups faced and address their concerns.

82. Kenya would shortly be enacting legislation to address issues related to article 4 of the Convention and to other treaties that were non-self-executing and to which Kenya was a party.

83. **Mr. Amir** asked if there was an oversight body, such as a Constitutional Council, to ensure that legislation adopted by Parliament was in line with the Constitution. He also asked if legislation had been enacted to confer legality on Kenya's national reconciliation policy.

84. **Mr. Kilonzo** (Kenya) said that three bodies ensured that all laws complied with the Constitution: the Commission for the Implementation of the Constitution, which monitored proposed legislation to ensure its constitutionality; a 27-member parliamentary oversight commission; and, most importantly, the Supreme Court, which comprised five judges and was presided over by a Chief Justice. That court would be the ultimate authority to rule on the constitutionality of all legislation or other actions undertaken by the Government.

85. Furthermore, the Truth, Justice and Reconciliation Commission of Kenya sought to promote national cohesion and integration. Legislation was also in place to provide for the prosecution of persons who spread hate speech.

86. Kenya was currently addressing issues related to the admissibility of cases filed against Kenyan citizens by the International Criminal Court. However, prosecution did not promote reconciliation and Kenya would seek a variety of means to promote reconciliation within the country.

87. **Mr. Calí Tzay**, referring to paragraph 32 of the Kenya report, noted that the existence of indigenous peoples in the country had previously been viewed as an element that impeded national development. He wondered if Kenyans still considered their indigenous peoples in that way and whether de facto equality existed in Kenya.

88. **Mr. Kolonzo** (Kenya) assured the Committee that indigenous peoples were not seen as an impediment to the country's progress. The State was, moreover, obliged to promote the culture of indigenous groups, including their languages.

89. **Mr. Peter** (Country Rapporteur) commended the delegation on its very thorough engagement with the Committee.

90. Although there were some areas of concern, including with regard to upholding the Constitution, Kenya had, in its Constitution, established a road map that could guide the country in the future.

91. Kenya was to be commended on its efforts to resolve the outstanding issues related to the Enderois people and to Nubian children. It was to be hoped that all outstanding issues in that regard would be resolved in the very near future.

92. The costs that would be incurred by the commissions that Kenya had established or was considering establishing remained a point of deep concern. Referring to an article published in the *Daily Nation* on 17 July 2011, he noted that each commission would cost about KSh 10 million per month, excluding the cost of official transport and support staff. When the public became aware of the high cost of such commissions, support for the new Constitution might erode. Democracy must be affordable.

93. He encouraged Kenya to continue its efforts to provide equal and fair treatment to all its citizens. That was the most effective means to prevent the outbreak of inter-ethnic violence. Kenya should also resolve the situation of its internally displaced persons as a matter of urgency.

94. It should be noted that his comments constituted an initial reaction to Kenya's report and not the Committee's concluding observations.

95. **Mr. Kilonzo** (Kenya) thanked Mr. Peter for his comments and, noting his concerns relating to the cost of the country's commissions, said that Kenya's Constitution provided for the establishment of a Salaries and Remuneration Commission to harmonize all salaries and to advise both the national government and regional governments in that regard. The Constitution provided, moreover, for the hiring of commissioners on a part-time basis in order to reduce costs.

The meeting rose at 1.05 p.m.